

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jihad Anthony Zogheib,

Petitioner,

v.

Steve Wolfson, in his Capacity as District
Attorney, Clark County, Nevada,

Respondent.

Case No.: 2:14-cv-855-JAD-NJK

**Order Dismissing Case for Failure
to Comply with Court Order**

Petitioner Jihad Anthony Zogheib commenced this action by filing a Petition for Writ of Mandamus alleging overzealous prosecution by the Clark County District Attorney. Doc. 1 at 1-4. Zogheib also moved for a hearing on his mandamus petition. Doc. 5. In a November 13, 2014, order, I found that Zogheib failed to comply with the Federal Rules of Civil Procedure by (1) not styling his mandamus petition as a complaint, and (2) not properly serving a summons and complaint on defendants. Doc. 6. I gave Zoghieb until December 15, 2014, to (1) file a proper complaint, (2) effectuate service of process on the defendant in compliance with the rules of this court, and (3) file proof of service. I also strongly cautioned Zogheib that if he failed to comply with any portion of the order, his case could be dismissed with prejudice. *Id.* at 2.

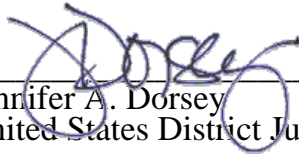
Two weeks have passed since Zogheib's response deadline, but there is no indication that he has taken any of the steps outlined in my prior order or explained why he cannot do so. Under Rule 41(b), "If the plaintiff fails to prosecute or comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the order states otherwise, a dismissal under this subdivision . . . operates as an adjudication on the

merits.”¹ Rule 41(b) of the Federal Rules of Civil Procedure also permits a district court to dismiss an action *sua sponte* for failure to prosecute.² “In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.”³

Consideration of all five factors in this case favors dismissal of Zogheib’s claim here. The first two factors favor dismissal because I have permitted plaintiff ample time to complete the necessary step of re-styling his complaint and serving it on defendants, but he has not responded. I note that there is no risk to the defendants, who have not yet appeared; and I have already explored the less drastic alternatives by permitting plaintiff additional time to re-style his complaint and serve it on defendants. Although dismissal of this action contravenes the public policy of adjudicating cases on their merits, the other four factors weigh in favor of dismissal. Exercising my discretion, I find that this case should be dismissed for Zogheib’s failure to prosecute.

Accordingly, it is **HEREBY ORDERED** that Zogheib’s claims are DISMISSED WITH PREJUDICE for failure to comply with the court’s November 15, 2014, order. The clerk of court is instructed to close this case.

DATED: December 29, 2014.



 Jennifer A. Dorsey
 United States District Judge

¹ Fed. R. Civ. Proc. 41(b). Such a dismissal does not operate as an adjudication on the merits in several circumstances, none of which are applicable here. *See id.*

² *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (recognizing that a court “may act *sua sponte* to dismiss a suit for failure to prosecute”); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (“courts may dismiss under Rule 41(b) *sua sponte*, at least under certain circumstances”).

³ *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992)).